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IN THE HON'BLE CHHATTISGARH HIGH COURT AT BILASPUR

W.P.NO. 1748 /2002 (S.B.)

PETITIONER

SMT. SAROJBAI RATHIYA, W/O. SHRI ISHWARPRASAD, SARPANCH, aged 30 years GRAM PANCHAYAT PAMGARH, TAH. KHARSIA, DISTT. RAIGARH

VERSUS

RESPONDENTS

1) STATE OF CHHATTISGARH, THROUGH : COLLECTOR RAIGARH

2) ADDITIONAL COLLECTOR, RAIGARH (CHHATTISGARH)

SUB DIVISIONAL OFFICER, KHARSIYA, DISTT. RAIGARH (CG)

4) SHRI ATUL SHETE, NAIB TAHSILDAR, KHARSIA, DISTT. RAIGARH (CHHATTISGARH).

5) SANTKUMAR, SON OF SHRI RAMDHAN, UP-SARPANCH.

6) BINOD KUMAR, SON OF SHRI ANAND, PANCH

7) GANESH, SON OF NOT KNOWN.

8) SAHASRAM, SON OF NOT KNOWN, PANCH,

9) SUKHRU SON OF BHOKLO, PANCH.

10) DINDAYAL, SON OF SHRI MANGAL SINGH, PANCH,

11) SMT. VRINDAWATI, WIFE OF SHRI CHECHHURAM, PANCH,

12) SMT. HEERAMATI, WIFE OF SHRI ROHIT KUMAR, PANCH

13) RUPNARAYAN, SON OF NOT KNOWN, PANCH.

14) SAMARURAM, SON OF NOT KNOWN, PANCH.

P.R. No. ..... Presented by Shri ..... dated 17/5/02

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CLERK TO A.G. BILASPUR

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15) PANCHMATI, WIFE OF SHRI AMARSINGH, PANCH,

16) KAUSHALYA WIFE OF SHRI SAMPAT, PANCH.

17) PREMKUMAR, SON OF SHRI GANGARAM, PANCH.

FROM SL.NO. 5 TO 17 ARE R/O. AADPATHRA, TAH. KHARSIA, DISTT. RAIGARH (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

(60)

HIGH COURT OF CHHATTISGARH; BILASPUR

W.P. No.1748/2002

WRIT PETITION UNDER ARTICLE 226 / 227 OF CONSTITUTION OF INDIA

Petitioner: **Smt. Sarojbai Rathiya**

Versus

Respondent: **State of Chhattisgarh & Ors**

For petitioner: Shri P.K.C.Tiwari, Adv.

For respondents: Shri Ranbir Singh, GA for the Respondents No.1, 2 & 3.

Date of Order

08-07-2003

PRESENT:

HON'BLE MR.JUSTICE P.C.NAIK

The petitioner was elected as Sarpanch of Gram Panchayat Pamgarh Tah. Pandariya Distt. Raigarh. At a meeting held on 04-2-2002 a 'motion of no confidence' was passed against the petitioner. This meeting was convened by the Prescribed Authority on the basis of a requisition received from a majority of the Panchas constituting the Gram Panchayat. The Presiding Officer submitted a report to the Prescribed Authority who held the 'motion of no confidence' to have been passed in accordance with the statutory provisions. Aggrieved therewith the petitioner preferred an appeal under Section 91 of Panchayat Raj Adhiniyam, 1993 (herein referred to as the Adhiniyam), before the Additional Collector, Raigarh, which was dismissed.

Aggrieved therewith the petitioner has approached this Court for relief.

2. The contention of the learned counsel for the petitioner is that since notice of meeting was not served seven days prior to the date of meeting which was to be held on 04-2-2002, but was served on 02-02-2002, the meeting could not be said to have been validly convened and as such the 'no confidence motion' that was passed was illegal and could not be acted upon. It was also contended that as admittedly a requisition was submitted by some Panchas on 08-01-2002, the Prescribed Authority was not justified in accepting a further requisition on 16-1-2002 and convening the meeting on that basis. At any rate, it was submitted that the meeting having not been convened in accordance with the statutory provisions was not a validly convened meeting and any decision taken at that meeting was illegal and could not be acted upon. It was also submitted that the petitioner was not given a proper opportunity to speak at the meeting and though she had cast her vote against the 'motion of no confidence' yet this was not recorded/reflected in the record which indicates the bias on the part of the authority against the petitioner. It was also contended that if the requisition dated 08-01-2002 was not in a proper format it ought to have been rejected and the fact that the authorities gave time to the Panchas to submit a fresh requisition in a proper format also indicates its bias against the petitioner.

3. Opposing the petition, it was submitted by the learned State Counsel that initially some members of the Gram Panchayat had submitted an application for convening the

meeting to consider the 'no confidence motion' against the Sarpanch, but as the application was not in a proper format, the Prescribed Authority had asked them to submit an application in the proper format. They appeared on 16-1-2002 but, as all the Panchas were not present, the Prescribed Authority ordered their appearance on 21/01/2002. On that date, Up-sarpanch and all the Panchas appeared before the Prescribed authority, who on finding the requisition to be in order fixed the time and place of the meeting and directed notice thereof to be served to all the Panchas. According to the State, this notice was duly served on all the members of the Gram Panchayat including the petitioner. A meeting was held on 04.02.2002 as scheduled in which 14 members including the petitioner had participated. 11 members cast their votes in favour of 'no confidence motion' and none against. Since more than 3/4th members of the Gram Panhchayat had supported the 'no confidence motion', it was declared to have been validly passed. It was also submitted that the appeal under Section 91 of the Adhiniyam was not maintainable. The proper remedy, it was submitted, was to raise a dispute under Section 21(4) of the Adhiniyam within a period of seven days from the date on which the motion of no confidence was passed which having not been done the petitioner was not entitled to any relief.

4. Considering the nature of the contentions raised the Court had called upon the State counsel to produce the original record and accordingly the original record was placed before the Court for its perusal. The record indicates that on 08-01-2002 Up-sarpanch- Sant Kumar along with 11 Panchas had

submitted an application regarding 'no confidence motion' against the Sarpanch. Since this requisition was not in the proper format they were asked to do so and the matter was adjourned to 16.1.2002. However, as on 16.1.2002 all the Panchas were not present the matter was adjourned to 21.01.2002 for appearance of all the signatories. On that day (i.e. 21.01.2002) Up-sarpanch Sant Kumar along with the 11 Panchas who had also signed the application appeared before the Prescribed Authority who, on being satisfied that the application was in order and in accordance with Rule 3 (3) of the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994, hereinafter referred to as the "Niyam", registered the proceedings. Shri Atul Sethe, Naib Tehsildar, Kharsiya was nominated to be the Presiding Officer of the meeting which was to be convened on 14-2-2001 at 11.00 a.m. in Panchayat Bhawan, Pamgarh. It was also directed that notice of the meeting be served/given to all the elected members including Sarpanch. The record further indicates that notices were prepared and 11 copies thereof were handed over to the Gram Sahayak on 22.01.2002. There is also a document which bears as an endorsement-dated 24.1.2002 of the Gram Sahayak that notices of meeting were served on the petitioner-Sarpanch, Up-sarpanch and other twelve Panchas. The said document bears the acknowledgement of the petitioner, Up-sarpanch and other Panchas.

5. From the record of proceeding which bears the signature of Naib Tahsildar, it is clear that a meeting was held on 04.02.2002 at 11.00a.m wherein all the 14 members of the Gram Panchayat were present. At the said meeting Dindayal a Panch, had moved the 'no confidence motion' and also spoke in favour thereof. The petitioner – Sarpanch was given an opportunity to express her views and thereafter ballot papers were handed over and all the members were called one by one, and each one of them had cast his / her vote. On scrutiny 11 votes were found in favour of the 'no confidence motion', none against and three votes were held to be invalid. Thus all the 14 ballot papers were accounted for. A report of the proceedings was sent to the Prescribed Authority which being satisfied that the no confidence motion had been passed in accordance with the statutory provisions at a properly convened meeting, held it to have been validly passed. Accordingly intimation was sent to the Chief Executive Officer under Section 38(1)(b) of the Adhiniyam.

6. The contention of the learned counsel for the petitioner is that since 7 clear days before notice of meeting was not served, the said meeting was "illegal", cannot be accepted. What is required under Sub-rule (3) of Rule 3 of the Niyam is that the notice of the meeting specifying the date, time and place shall be caused to be despatched 7 days before the meeting. It is not necessary for passing of a no confidence motion that notice of the meeting should be served 7 clear days before the date of the meeting. Thus, the requirement of 7 clear days is not for delivery of notice but it is for despatch of the notice. Whether

the notices are served before 7 clear days of the meeting or not, is not relevant. The contention that the proceedings were not truthfully recorded cannot also be accepted. As observed above, the record clearly indicates that 14 Panchas including the petitioner had participated in the meeting where 14 votes were cast-11 votes were in favour of the no confidence motion, none against and 3 votes were held to be invalid. Thus all 14 votes are accounted for. There is nothing on record to indicate that the petitioner had lodged any protest regarding the conduct of the meeting or that the proceedings had not been truly and faithfully recorded. The record indicates that the petitioner was also given an opportunity to speak before the voting. Thus, there has been compliance of the statutory requirements. The contention that the notices were not properly issued cannot also be accepted as the record clearly indicates that notices were ordered to be despatched on 21.1.2002 and copies thereof received by the Gram Sahayak on 22.1.2002 and that notices were duly served on all the 14 members of the Gram Panchayat which is clear from the endorsement dated 24.1.2002 of the Gram Sahayak.

7. Admittedly, the meeting was held on 4.2.2002 at which the no confidence motion was passed and if the petitioner felt herself aggrieved with the motion of no confidence, she could have challenged the same by taking recourse to Sub-section (4) of Section 21of the Adhiniyam, which provides that Sarpanch or Up-sarpanch desiring to challenge the validity of a motion of no confidence shall be required to refer the dispute to the Collector within 7 days from the date on which the motion of no

confidence was passed. This was obviously not done. Instead, the petitioner preferred an appeal under Section 91 of the Panchayat Raj Adhiniyam which was entertained by respondent No.2 and dismissed on merits. An appeal under Section 91 of the said Adhiniyam was not maintainable. To the maintainability of the appeal, an objection was raised but it does not appear to have been decided by respondent No.2 who instead proceeded to dispose of the appeal on merits. The record also does not give an indication as to when in fact the appeal was filed. A rubber stamp on the memo of appeal bearing the signature of the Superintendent of Collectorate Raigarh bears the date "8 MARCH 2002" and at the left margin of the first page of the memo of appeal there is a hand-written endorsement which reads thus:-

> "Presented by Shri I.P.Sharma, Advocate. Register a case. Notice the Respondents obtain the documents of the lower Court. Heard on the point of stay. Stay is hereby granted till next date.
>
> Sd/-(illegible)
> 11/02/2002
> ADC"(illegible)

The date under the signature reads "11.02.2002". The date on the second page of the memo of appeal reads "Raigarh Dinank 8.3.02." The first order sheet in the case was recorded on 11.3.2002. The question is if the memo of appeal bears the date "8.3.2002" and the endorsement of the Superintendent of Collectorate, Raigarh is also dated 8th March 2002, it is difficult to imagine as to how the date under the hand-written endorsement could be "11.02.2002". Obviously that is wrong. A memo of appeal dated 8th March 2002 cannot contain an

endorsement of the Authority dated 11.2.2002. Be that as it may, even assuming that the appeal could be treated as a dispute under Sub-section (4) of Section 21 of the Adhiniyam which also lay before the Collector, it would be barred by time having not been raised within 7 days from the date of meeting which was held on 4.2.2002. Therefore, a dispute having not been raised within the prescribed period, the petitioner cannot, in these proceedings, be permitted to assail the validity of the no confidence motion passed against her. In this view of the matter, decision on other issues and contentions raised would be purely academic for the purpose of this case and as such they are left open to be considered in an appropriate proceeding if raised.

8. For the reasons aforesaid, the petition fails and is dismissed. There shall however be no order as to costs.

Sd/-
P. C. Naik
Judge